

**ASSEMBLY, No. 343**

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**STATE OF NEW JERSEY**

**216th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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**SYNOPSIS**

Creates first degree crime of home invasion, makes crime subject to No Early Release Act, and upgrades burglary of a residence to a second degree crime under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel

A343 BRAMNICK, ANGELINI

2

1 AN ACT concerning home invasion, supplementing Title 2C of the  
2 New Jersey Statutes, and amending N.J.S.2C:18-2 and P.L.1997,  
3 c.117.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) a. A person is guilty of home invasion if he  
9 enters or surreptitiously remains in the residential dwelling of  
10 another, knowing that he is not licensed or privileged to do so, with  
11 the intent to commit a robbery, as defined in N.J.S.2C:15-1, any  
12 crime of the first or second degree, or any crime or offense set forth  
13 in chapters 13 and 14 of Title 2C of the New Jersey Statutes, at a  
14 time when a person or persons, other than persons acting in concert  
15 with the actor, are present and the actor:

16 (1) uses force or inflicts bodily injury on a person in the  
17 residential dwelling;

18 (2) threatens a person in the residential dwelling with, or  
19 purposely or knowingly puts him in fear of, immediate bodily  
20 injury;

21 (3) commits, attempts to commit, or threatens to commit any  
22 crime of the first or second degree or any crime or offense set forth  
23 in chapters 13 and 14 of Title 2C of the New Jersey Statutes; or

24 (4) is armed with or threatens the use of a deadly weapon or  
25 explosive.

26 b. Home invasion is a crime of the first degree.  
27 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 or  
28 any other law to the contrary, a person convicted under this section  
29 shall be sentenced to a term of imprisonment between 10 and 30  
30 years.

31 c. As used in this section:

32 “Bodily injury” and “deadly weapon” shall have the meaning set  
33 forth in N.J.S.2C:11-1.

34 “Explosive” shall have the meaning set forth in subsection e. of  
35 N.J.S.2C:39-1.

36 “Residential dwelling” means a permanent structure intended as  
37 and currently being utilized as a residence by a private person or  
38 persons.

39

40 2. N.J.S.2C:18-2 is amended to read as follows:

41 2C:18-2. Burglary. a. Burglary defined. A person is guilty of  
42 burglary if, with purpose to commit an offense therein or thereon  
43 he:

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 (1) Enters a research facility, structure, or a separately secured  
2 or occupied portion thereof unless the structure was at the time  
3 open to the public or the actor is licensed or privileged to enter;

4 (2) Surreptitiously remains in a research facility, structure, or a  
5 separately secured or occupied portion thereof knowing that he is  
6 not licensed or privileged to do so; or

7 (3) Trespasses in or upon utility company property where public  
8 notice prohibiting trespass is given by conspicuous posting, or  
9 fencing or other enclosure manifestly designed to exclude intruders.

10 b. Grading. Burglary is a crime of the second degree if in the  
11 course of committing the offense, the actor:

12 (1) Purposely, knowingly or recklessly inflicts, attempts to  
13 inflict or threatens to inflict bodily injury on anyone; **[or]**

14 (2) Is armed with or displays what appear to be explosives or a  
15 deadly weapon; or

16 (3) Enters a residential dwelling or surreptitiously remains in the  
17 dwelling when a resident or any other person, other than a person  
18 acting in concert with the actor, is present in the dwelling.

19 Otherwise burglary is a crime of the third degree. An act shall  
20 be deemed "in the course of committing" an offense if it occurs in  
21 an attempt to commit an offense or in immediate flight after the  
22 attempt or commission.

23 As used in this section, the term "residential dwelling" means a  
24 permanent structure intended as and currently being utilized as a  
25 residence by a private person or persons.

26 For the purposes of paragraph (3) of this subsection, it is not an  
27 element of the offense that the actor knew that any other person was  
28 present in the dwelling when the actor entered or surreptitiously  
29 remained in the dwelling, and it shall not be a defense that the actor  
30 did not know that any other person was present in the residential  
31 dwelling when the actor entered or surreptitiously remained in the  
32 dwelling.

33 (cf: P.L.2009, c.283, s.2)

34

35 3. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to  
36 read as follows:

37 2. a. A court imposing a sentence of incarceration for a crime  
38 of the first or second degree enumerated in subsection d. of this  
39 section shall fix a minimum term of 85% of the sentence imposed,  
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section  
42 shall be fixed as a part of every sentence of incarceration imposed  
43 upon every conviction of a crime enumerated in subsection d. of  
44 this section, whether the sentence of incarceration is determined  
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
46 other provision of law, and shall be calculated based upon the  
47 sentence of incarceration actually imposed. The provisions of  
48 subsection a. of this section shall not be construed or applied to

1 reduce the time that must be served before eligibility for parole by  
2 an inmate sentenced to a mandatory minimum period of  
3 incarceration. Solely for the purpose of calculating the minimum  
4 term of parole ineligibility pursuant to subsection a. of this section,  
5 a sentence of life imprisonment shall be deemed to be 75 years.

6 c. Notwithstanding any other provision of law to the contrary  
7 and in addition to any other sentence imposed, a court imposing a  
8 minimum period of parole ineligibility of 85 percent of the sentence  
9 pursuant to this section shall also impose a five-year term of parole  
10 supervision if the defendant is being sentenced for a crime of the  
11 first degree, or a three-year term of parole supervision if the  
12 defendant is being sentenced for a crime of the second degree. The  
13 term of parole supervision shall commence upon the completion of  
14 the sentence of incarceration imposed by the court pursuant to  
15 subsection a. of this section unless the defendant is serving a  
16 sentence of incarceration for another crime at the time he completes  
17 the sentence of incarceration imposed pursuant to subsection a., in  
18 which case the term of parole supervision shall commence  
19 immediately upon the defendant's release from incarceration.  
20 During the term of parole supervision the defendant shall remain in  
21 release status in the community in the legal custody of the  
22 Commissioner of the Department of Corrections and shall be  
23 supervised by the State Parole Board as if on parole and shall be  
24 subject to the provisions and conditions of section 3 of P.L.1997,  
25 c.117 (C.30:4-123.51b).

26 d. The court shall impose sentence pursuant to subsection a. of  
27 this section upon conviction of the following crimes or an attempt  
28 or conspiracy to commit any of these crimes:

- 29 (1) N.J.S.2C:11-3, murder;
- 30 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 31 (3) N.J.S.2C:11-5, vehicular homicide;
- 32 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 33 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),  
34 disarming a law enforcement officer;
- 35 (6) N.J.S.2C:13-1, kidnapping;
- 36 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 37 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
38 subsection c. of N.J.S.2C:14-2, sexual assault;
- 39 (9) N.J.S.2C:15-1, robbery;
- 40 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 41 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
42 arson;
- 43 (12) N.J.S.2C:18-2, burglary;
- 44 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 45 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
46 booby traps in manufacturing or distribution facilities;
- 47 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 48 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

1 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
2 possessing chemical weapons, biological agents or nuclear or  
3 radiological devices; **[or]**  
4 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
5 degree; or  
6 (19) P.L. , c. (C. ) (pending before the Legislature as this  
7 bill), home invasion.  
8 e. (Deleted by amendment, P.L.2001, c.129).  
9 (cf: P.L.2013, c.136, s.4)

10  
11 4. This act shall take effect immediately.

12  
13  
14 STATEMENT

15  
16 This bill creates the first degree crime of home invasion and  
17 makes this crime subject to the No Early Release Act. In addition,  
18 the bill upgrades burglary of a residence to a second degree crime  
19 under certain circumstances.

20 Specifically, under the provisions of this bill, a person commits  
21 the crime of home invasion if he or she enters a person's residence  
22 with the intent to commit a robbery, a first or second degree crime,  
23 or certain kidnapping and sexual crimes or offenses when another  
24 person or persons are present and the actor: 1) uses force or inflicts  
25 bodily injury on a person in the residence; 2) threatens a person in  
26 the residence with, or purposely or knowingly, puts the person in  
27 fear of immediate bodily injury; 3) commits, attempts to commit, or  
28 threatens to commit any first or second degree crime or certain  
29 kidnapping and sexual crimes and offenses; or 4) is armed with or  
30 threatens the use of a deadly weapon or explosive.

31 Under this bill, home invasion is a first degree crime, and upon  
32 conviction, requires the person to be sentenced to a term of  
33 imprisonment between 10 and 30 years.

34 In addition, the bill provides that a person who is convicted of  
35 the crime of home invasion is subject to sentencing under the No  
36 Early Release Act (NERA). A person sentenced under the NERA is  
37 required to serve 85% of the sentence imposed, during which he or  
38 she would not be eligible for parole.

39 Further, under the provisions of this bill, burglary is upgraded to  
40 a second degree crime if a person enters a residence when a resident  
41 or any other person, other than a person acting in concert with the  
42 actor, is present in the home. Under this bill, knowledge that  
43 another person was in the home is not an element of this offense  
44 and it is not a defense that the offender was unaware that another  
45 person was present in the home when they entered the residence.

46 Under current law, burglary is a crime of the second degree if the  
47 defendant inflicted, attempted to inflict, or threatened bodily injury  
48 or was armed during the course of the offense. In all other

**A343 BRAMNICK, ANGELINI**

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1 circumstances, burglary is a crime of the third degree. A crime of  
2 the second degree is punishable by a term of imprisonment between  
3 five to 10 years, a fine not to exceed \$150,000 or both. A crime of  
4 the third degree is punishable by a term of imprisonment between  
5 three to five years, a fine not to exceed \$15,000 or both.